

***United States Court of Appeals
for the Second Circuit***



APPENDIX

Docket No.

76-2174

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

CALVIN L. TRUDO

Petitioner-Appellant

v.

UNITED STATES PAROLE BOARD

Appellee

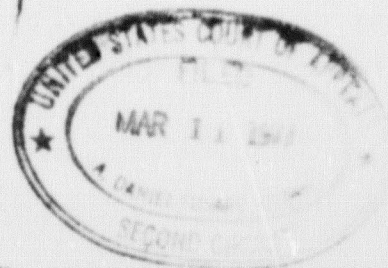
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Q/S

Appeal from the United States District
Court for the District of Vermont

APPENDIX FOR THE UNITED STATES

GEORGE W.F. COOK
United States Attorney

JEROME J. NIEDERMEIER
Assistant U.S. Attorney
District of Vermont



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See below

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76-81

PLAINTIFFS

DEFENDANTS

Calvin Lawrence Trudo

vs.

United States Parole Board

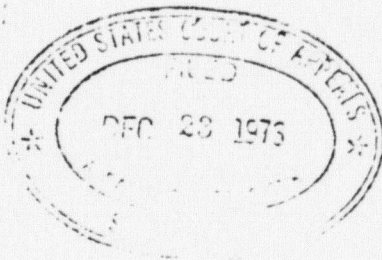
CAUSE

Writ of Habeas Corpus pursuant to Title 18, Sec: 2241.

ATTORNEYS

pro-se
Calvin L. Trudo
P.O. Box 1000
Lewisburg, PA 17837

U.S. Attorney (Niedermeier)



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PROCEEDINGS

1976

Mar. 29 1. Filed Petition for writ of Habeas Corpus Pursuant Title 18, Sec. 2241
 " " 2. " Memorandum in support of petition for writ of Habeas Corpus.

April 8 4. Issued Order to show Cause and delivered same to Marshal for Service.
 " 23 3. Filed Response of the United States to Court's Order to Show Cause.
 " 27 4. " Amended response of the United States to Court's Order to Show Cause.
 " 28 5 " Order to Show Cause returned served.

May 6 6 " Interim Opinion and Order--that Govt, within 20 days from the date hereof to support by affidavit or otherwise, the allegation pertaining to petitioner's parole revocation hearings contained in its Response and Amended Response filed April 23 and April 27 1976, respectively: Within 20 days from the date of service upon him of Govt's compliance with the foregoing order, petitioner shall file his response with the Court for such further consideration of his petition as may be indicated in light of such response. Mailed copy to attorneys.

" 25 7 Filed Response of United States to Court's Interim Opinion and Order.
 June 1 8 " Reply to Response and Amended Response to Court's Order to Show Cause and Interim Opinion and Order.

June 3 9 Filed Response to affidavit and Motion to Exclude by Plaintiff.
 " " 10 " Petition in support of Reparolet.

Sep. 14 11 " Order -- Defn. submit certified transcript of proceedings of parole revocation hearing held April 4 or 5, 1976 with copy to petitioner within 20 days from date of this Order. Mailed copy to attys.

Oct. 4 12 Filed Government's Motion for extension of Time to Comply.
 " " 13 " Affidavit of Jerome J. Niedermeier, Assistant United States Atty. Upon consideration of Government's Motion for Extension of Time to Comply with Court's Order dated 9-14-76, it is ORDERED: Extension of October 31, 1976, is granted. Copy mailed attorneys.

" 8 14 Filed Plt's objection to Motion for Time to Comply.
 " 14 15 " certified transcript of petitioner's parole revocation hearing held on 4-5-76.

" " 16 " Petition in support of reparalet.
 Oct 15 17 Filed Government's Motion to dismiss.
 " " 18 Filed memorandum in support of motion to dismiss.

Oct 26 19 Filed Plaintiff's reply to motion to dismiss.
 Nov. 8 20 Filed Opinion and Order--defn's motion to dismiss is denied and that pltf's petition for writ of habeas corpus pursuant to 28 USC § 2241 is also denied. Mailed copy to parties.

" 15 21 " Pltf's Notice of Appeal. Mailed copy to Mr. Trudo, U. S. Atty. Judge Coffey and Clark, U. S. Court of Appeals for the Second Circuit.

" 30 22 " Certificate of Probable Cause. Mailed copy to attys.
 Dec. 3 23 " Petitioner's Motion to proceed in forma pauperis and for appointment of counsel.

" " 24 " Petitioner's affidavit in support of Motion to proceed in forma pauperis and for appointment of counsel.

" " Mailed record on appeal to Clerk, U. S. Court of Appeals for the Second Circuit. Attys. notified.

UNITED STATES DISTRICT COURT
DISTRICT OF VERMONT

CALVIN LAWRENCE TRUDO

v.

UNITED STATES PAROLE BOARD

CIVIL NO. 76-81

RESPONSE OF UNITED STATES TO COURT'S
INTERIM OPINION AND ORDER

Pursuant to the Order of this Honorable Court, dated May 6, 1976, the United States hereby submits the attached affidavit and summary of petitioner's parole revocation hearing in support of its position.

Dated at Rutland, in the District of Vermont, this 24th day of May, 1976.

UNITED STATES OF AMERICA

GEORGE W. F. COOK
United States Attorney

By: *ld*

JEROME J. NIEDERMEIER
Assistant U. S. Attorney

CERTIFICATE OF SERVICE

I, Jerome J. Niedermeier, Assistant U. S. Attorney for the District of Vermont, do hereby certify that I served the foregoing RESPONSE OF UNITED STATES TO COURT'S INTERIM OPINION AND ORDER upon the petitioner by mailing a copy of same to him c/o Lewisburg Federal Penitentiary, Lewisburg, PA 17830 this 24th day of May, 1976.

ld

JEROME J. NIEDERMEIER
Assistant U. S. Attorney

AFFIDAVIT

I, James E. Newman, being duly sworn, depose and state as follows:

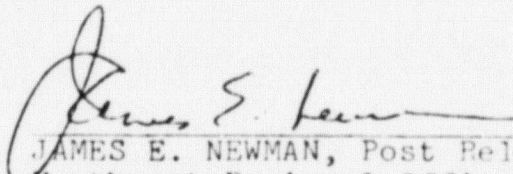
I am the Post Release Analyst of the Northeast Region of the United States Board of Parole, with offices at Scott Plaza II, Industrial Highway, Philadelphia, Pennsylvania.

I have examined the file of Calvin L. Trudo, Register Numbers 71894-158 and 26030-145 and find as follows:

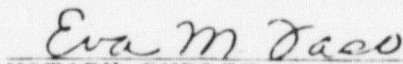
Mr. Trudo was originally sentenced for the crime of bank robbery on December 11, 1970 to an eighteen year sentence pursuant to 18 U.S.C., Section 4208(a)(2), and was released on parole on September 27, 1974. On January 26, 1975, Mr. Trudo entered a guilty plea to one count of unauthorized possession of a firearm by a convicted felon in the United States District Court for the District of Vermont, and on March 7, 1975, was sentenced to a term of eighteen months pursuant to 18 U.S.C., Section 4208(a)(2). A parole violator warrant, issued on February 10, 1975, was relayed by this office to the Lewisburg Penitentiary on July 10, 1975, to be lodged as a detainer. On January 30, 1976, the warrant was executed and on April 4, 1976, a revocation hearing was held. A copy of the summary of this hearing is attached. The decision of the Board following this hearing was to continue Mr. Trudo's case to December 1976, when Mr. Trudo will either be reparaoled on a record review or will receive an in-person hearing relative to reparole. The decision was rendered on April 13, 1976. Mr. Trudo has not filed a parole appeal as to the April 13, 1976 decision.

While Mr. Trudo was given an initial hearing on the eighteen month term on August 8, 1975, the warrant and detainer was not brought to the attention of the Hearing Examiners by the institutional staff and disposition of same was thus delayed until the revocation hearing on April 4, 1976.

DATE: May 13, 1976


JAMES E. NEWMAN, Post Release Analyst
Northeast Regional Office
United States Board of Parole
Philadelphia, Pennsylvania 19113

Subscribed and sworn to before me this 13th day of May, 1976.


NOTARY PUBLIC

UNITED STATES BOARD OF PAROLE HEARING SUMMARY

Name Calvin Lawrence TRUDO Reg. No. 26030-145
Member (or Examiner) Quirk/Terney Hearing Date 4/5/76
Type of hearing Revocation (Cass. # 3524-P) Institution Lewisburg

I. COUNSEL AND WITNESSES:

Subject has court appointed counsel in the person of Joseph F. Orso Jr. Esq. 326 Court Street, Williamsport, Pa. 17701. Telephone-Area code 717 3239839. The date of Mr. Orsos' appointment by Judge Muirr in the Middle District of Pennsylvania is 2/25/76.

II. CASE IDENTIFICATION:

Trudo was originally sentenced on December 11, 1970 to a 18 year a-2 following his conviction of bank robbery. He was paroled from this sentence on September 27, 1974 violated parole on November 12, 1974. A warrant was issued on February 10, 1975. In the meantime subject was sentenced to a 18 month concurrent sentence in the District of Vermont for possession of a firearm transported by interstate. The parole warrant was then lodged as a detainer and was executed on January 30, 1976 when subject reached the maximum portion of that sentence. In the interim on August 18, 1975 he had received a hearing on the 18 months sentence and was continued to expiration. At the time of the execution of the warrant subject had 5183 days remaining to be served. Up to date computation of this amount of time indicated a NR date of 8/9/85 with a full term date of 4/8/90.

Subject had his pliminary hearing at Lewisburg on January 28, 1976 at which time he admitted the charges and waived his right to counsel in favor of a representative he hoped would appear on his behalf. However, when this was changed he had another hearing on February 12, 1976 at which time he then contested the charges pending advice of counsel but withdrew his request for voluntary witness. On 2/12/76 Subject completed the I-16 form asked that an attorney be appointed to represent him at the revocation hearing.

III. REVIEW OF CHARGES AND FINDING OF FACT:

CHARGE #1- Possession of firearms transported interstate commerce.

On January 26, 1975, Mr. Trudo in the United States District Court for the District of Vermont pled guilty to the above offense according to the USPO Pichera's letter of February 6, 1975.

Subject admits the charge.

III. REVIEW OF CHARGES AND FINDING OF FACT: (Cont)

VIOLATION CHARGE # 2- Unauthorized possession of firearms.

On November 12, 1974 Mr. Trudo was indicted for the offense of possession of firearms. In a search of Mr. Trudo residence on November 27, 1974, the FBI reported to have located a "foreign make rifle, bolt action," a Winchester model 20, 12 gauge shot gun, and a Ithaca model 37 20 gauge pump shot gun. Mr. Trudo had no authorization to possess any firearm according to USPO Pichera's report of February 6, 1975.

Subject admits this charge.

VIOLATION CHARGE #3- Possession of stolen property.

On March 28, 1975, Mr. Trudo in Vermont District Court, Chittenden Circuit was arraigned and charged with the above offense according to USPO Pichera's report of April 3, 1975.

Subject admits this charge.

Subject gave one statement covering the 3 charges above. He also presented to the board a paper entitled petition and support of reparole in which he presented significant information concerning the above charges.

In summation he told the panel that when he was released on parole he was unable to find steady work and consequently had to borrow. He borrowed approximately \$300 from a person named Henry Caputo, who was a Government informer, as it turned out. He was approached by Caputo in late October or early November 1974, demanding his money. Subject was unable to pay the debt but did agree with Caputo to store certain guns on his property. He says that these were hunting guns and he also knew that they were stolen and that he stored them until they were picked up by a third party. As it turned out the investigation had been started on this particular operation by FBI and Treasury Agents and as a result the subject was arrested and charged with possession of firearms and interstate transportation, unauthorized possession of firearm and a felon in possession of firearms. Subject stated that he pled guilty at that time to the one count because he was obviously guilty. He did imply that he had also "taken the rap" for other people, but there is nothing further documented to substantiate this claim as a mitigating offender. Subject offers no other explanation other than the fact that he was pressed for money and that he felt this was a way of getting himself out from under the obligation that he owed Caputo.

III. REVIEW OF CHARGES AND FINDING OF FACT: (Cont)VIOLATION CHARGE #3 - (Cont)

On the basis of subjects admission and the information at hand the panel finds that he violated his parole in each of the three allegations above.

IV. OTHER ADMITTED VIOLATIONS: None.V. INFORMATION ON PAROLE STANDING AS A GOOD PAROLE RISK/COMMUNITY RESOURCES:

Trudo says that when he was released in September, 1974, he returned to his wife and children in Burlington, Vermont. A friend, one Clifford Robar, had offered him a job in construction work but when he arrived at home he found that recession and lack of work had closed down this company. He was able to only get a few hours work at the time and he was actively engaged in trying to seek other work when he fell prey to the above mentioned scheme. He states that he is much concerned about his family because while he has been gone his 6 years old daughter has been molested and under the care of psychiatrist. His wife is receiving public assistance and is unable to visit him at the institution because of lack of funds and he is quite worried about their welfare. Much of his domestic problems are outlined in the memorandum he has submitted which is being made a part of this record. His plan would be to return to Vermont but to relocate from Burlington. He is a member of the Teamsters Union and is a heavy equipment operator and feels sure he can get work if released when the weather is good. He said that the State of Vermont now has road construction contracts, that his father in law has a number of dump trucks that he sub-contracts out to the State and that he can get a job with this relative. He is particular concerned about getting home to his family. Mr. Orso pointed out that he had a letter from Dr. Donald Rife, a psychiatrist in Burlington, Vermont, who reports that he is treating the subjects' 6 year old daughter for the emotional impact of the recent attack and that he feels that it is mandatory that subject return home to be with his family. The panel notes, however, that subjects' adjustment under the concurrent 18 months has not been good. He has experienced difficulty in settling down and he has received a serious incident report for which withheld statutory good time was suspended for a 60 day period in July 1975. He is working as a steam fitter in the plumbing and heating industry and prior to the time during his previous commitment worked in the dental lab. He recognizes the fact that he has violated his parole but asked the panel to consider his release to the community as soon as possible based on compassionate reasons.

VI. EVALUATION REVIEW:

The panel has considered all the aspects in this case and in particular the plight of the family. Subject has some 16 months in on his current sentence. The panel feels that there is an accountability of at least 2 years over all for the violation of parole which took place within 2 months of release. The panel, therefore, is constrained to give subject a set-off to measure up to this accountability standard which will call for review later in the year. It is felt also that time subject if he is given favorable consideration would be released at a time when job opportunities are again good in this Northern State.

VII. TENTATIVE DECISION:

#1- Revoke parole, and continue for institutional review hearing in December. 1976.

VIII. REASONS FOR REVOCATION:

VIOLATION CHARGE #1 - Possession of firearms transported interstate commerce.

BASIS: Your admission to the panel.

VIOLATION CHARGE # 2 - Unauthorized possession of firearms.

BASIS: Your admission to the panel.

VIOLATION CHARGE # 3 - Possession of stolen property.

BASIS: Your admission to the panel.

IX. REASONS FOR CONTINUANCE:

Your release at this time would depreciate the seriousness of your parole and promote disrespect for the paroling process. It does not appear to be a reasonable probability at this time that you would live at liberty without violating the law because you were convicted of the charge of possession of firearms and interstate commerce while on parole.

RECEIVED
I hereby certify the foregoing to be
a true and correct transcript of the
summary dictated at the UNITED STATES BOARD OF PAROLE
and on the occasion indicated.
APR 12 1978

Cheryl Jones

NAME: Calvin L. Trudo
EXAMINERS: Quirk/Tenney

Reg. No.: 26030-145
Hearing Date: April 5, 1976

Transcript of Revocation Hearing Conducted at USP, Lewisburg, Pa.

Quirk: How do you do? You are Calvin Lawrence Trudo, correct?
Trudo: Correct.
Quirk: Well, I think my name. My name is Quirk.
Mr. Tenney here on my left.
Trudo: How do you do, sir?
Quirk: We're here today as Parole Examiners, Mr. Trudo, for the purpose of conducting a hearing into the alleged violation of your parole. You were notified that the case would be heard at this time. I see you have Mr. Orso here as counsel. As usual, Mr. Orso, would you give us your full name and your address with the zip code and your telephone number with the area code and your date of appointment. You've got that in your records, right?
Orso: Okay, it's Joseph F. Orso, Jr., 326 Court Street, Williamsport, Pa. 17701. My phone number is area code 717-323-9839 and the date of my appointment was February the 25th, 1976.
Quirk: I see. Of the middle district of Pennsylvania?
Orso: Yes, the middle district of Pennsylvania, Judge Malcolm Muir.
Quirk: I see. Thank you very much. Mr. Trudo, as we, is custom practice here, I want to go over what we call a check list of your procedural/legal rights and I'll ask you the questions, you can answer yes or no to them sir, whatever is appropriate. We just want to be sure that we've got everything covered. Now, you have received notice of this hearing, correct?
Trudo: Yes.
Quirk: All right. Now, you had, I believe, your preliminary hearing here when the warrant was executed which time you completed the necessary forms, we call them CJA-22 and the I-16. I believe the CJA-22, you had two preliminary hearings the first time you said when you didn't want to, ahh, you admitted you didn't want counsel, you thought you'd have a representative here. Second time, which was February 12th, I think, 78, you decided you want counsel and said that at that time you weren't making any statement concerning the charges themselves. Now, the only reason I bring that out is to indicate that you did have a preliminary hearing and you did sign a CJA-22, also the I-16 in which you asked for appointment of counsel. Correct?

Trudo: I was told that that wasn't a preliminary hearing. In fact, I asked Mr. James at that time if it was a preliminary hearing.

Quirk: The preliminary hearing as we call for it is where the charges were explained to you and you first admitted the charges.

Trudo: Oh, I had a hearing anyway, so than get tangled up...

Quirk: Oh, preliminary, preliminary to this

Trudo: Yeah.

Quirk: This is the revocation hearing, Trudo: okay that was something else. At that time you would have been advised of your right to counsel.

Trudo: Yeah.

Quirk: And your right to have voluntary witnesses. Let me ask you about that. Originally, on your first I-16 you asked for voluntary witnesses, on the second you did not. Now, I don't assume that one supersedes the other but I will ask you now do you want voluntary witnesses?

Trudo: No.

Quirk: I see.

Trudo: I had a man who want _____ was gonna come but didn't come.

Quirk: Have you ever gotten a copy?

Trudo: No.

Quirk: That's this one here. Two and one, three charges.

Trudo: I've read it, but I didn't have one.

Quirk: You don't have it with you now?

Trudo: I didn't get one.

Quirk: You have one, Mr. Orso?

Orso: Yes I have one.

Quirk: Then, ahh, you have received a copy of that because at least it was explained to you. Do you now feel that you've had sufficient time to prepare your case and to talk to Mr. Orso and are you ready to go?

Trudo: Yeah, well, this is nothing to prepare.

Quirk: Okay. Well, let me tell you a little bit about our procedure and this again is standard. Now we don't count the judges because we're not a court of law. Anything you tell us today could not be used in a court of law and in other proceedings; applies only to your violation hearing. We try to keep it informal, keep it non-adversary. We just want facts and you're the one that's gonna have to give them. We have some information; we need your information. We will acquaint you with what we have if you don't already know. The decisions, again, that we give you, you will recall that, you probably heard this before, they're tentative, any decisions that we give at this level are tentative; they are reviewed at our regional office.

About fifteen working days until you get the official decision, it is in writing. You do have a right to appeal that decision, Mr. Trudo. You will have the information at that time, as to how you go about appealing, if you decide to appeal, so you'll have all the necessary information. And, as I say, it will take about fifteen days. Now, basically we're going to acquaint you with what we have; we ask you to give us your statement of your version of it, which is your right. We will also be inquiring, as happens in these cases, we must also consider an alternate decision in the event that your parole is revoked. That means we will be going back and looking at the time you were on the street, and what went on. If during the course of our conversation, you should make admissions to anything that constitutes a violation of parole that is not on that paper you have in front of you there, we do have the right to make a finding. You understand? I want you to be sure of that.

Trudo: Yes.

Quirk: All right. Let me just see if I can bring ours up to date a little bit on the chronology of this. Mr. Trudo. This, originally, you had an eighteen year sentence for bank robbery. I think that was imposed according to the record in December 11, 1970. You were paroled in 74, September 27th. According to the record you violated this parole on or about November 12th, 74. I think as a result of one of the incidents you got an eighteen month concurrent sentence, right?

Trudo: Yes.

Quirk: The warrant was issued on the basis of the violation on February 10th, 1975 but was lodged as a detainer since you were then serving the eighteen month sentence. It was not executed at that time. The record would indicate that on that eighteen sentence, in August of 75, you had a hearing at which time you were continued to expiration.

Trudo: Mmm-hmm.

Quirk: Your expiration date then arrived on January 30, 1976, the warrant automatically becomes executed. Do you follow me?

Trudo: No, but

Quirk: Well, see you were actually

Trudo: Yeah

Quirk: Released on your MR date to the detainer. The detainer was the parole warrant. So, in effect, in effect, on the warrant time, you've got about two months now, but you've been in continual custody back to November 74. Right?

Trudo: That's true.

Quirk: Okay. So now after executing the warrant, you would have then to face, if revoked, 5,183 days. That has now been recomputed by the institution to come out with a new MR date of 8-9-85, a maximum date of 4-8-90. This is just a chronology up to what's happened. All right? Okay. Now, if we're ready, we'll move to the warrant application itself and again our procedure is relatively simple. There are three charges, I'm going to read each one of them to you separately, Mr. Trudo. After I've finished each one I'll just ask you, if you will, to say I admit or deny. I'll read the second one, admit or deny; I'll read the third one, admit or deny. Just to get the statement on record. Then we go back, you can tell us anything you want, to whatever extent you want about these things so that we'll have enough information to decide what we have here enough information to decide what we have here re: violation or no violation or whatever. Okay? All right, Mr. Trudo, this is now reading from the warrant application that you have in front of you. You might want to share that with your counsel because you should confer with him at ahh, whenever you think that it's necessary, I would ask, however, that you clear----- whatever comments you might have, you give me the answer.

Trudo: Okay. You get it non-direct.

Quirk: We have, then, three charges here. One is Possession of a Firearm Transported in Interstate Commerce. The heading, the narrative of that says that on January 26, 1975, Mr. Trudo, in the United States District Court for the District of Vermont, plead guilty to this offense and this is contained in Mr. Picher's letter of February 6, 1975. Do you admit or deny the Possession of Firearms Transported in Interstate Commerce?

Orso: No.

Quirk: You deny that?

Orso: No. I admit it.

Quirk: I admit it. All right. Second, Unauthorized Possession of Firearms. On November the 12th, 1974, now you know that these may overlap when I'm reading to you, Trudo was indicated for the offense of Possession of Firearms and a search of Mr. Trudo's premises on November 27, 1974 the FBI reportedly located, in quotes, foreign make rifle bolt action, close quotes, a Winchester, model 20, 12 guage shotgun and an Ithica model 37, 20 guage, pump shotgun. Mr. Trudo had no authorization to possess any firearm according to Mr. Picher's report of February 6, 1975. Mr. Trudo, the basic charge is Unauthorized Possession of Firearms, do you admit or

deny it?
Orso: I admit it.
Quirk: Okay. All right, number three, then is on the supplemental application, Possession of Stolen Property. On March 28, 1975 Mr. Trudo, in Vermont District Court, Chittenden Circuit, was arraigned and charged the above offense according to Mr. Picher's report of April 3, 1975. Now, this charge is Possession of Stolen Property. Do you admit or deny that charge?
Orso: I admit it.
Quirk: All right, sir. All right. We have three charges, you've given admissions to each charge. What do you want to tell us, sir, about, ah, looks like one and two are tied pretty much together.....
Orso: All three of them are, all three of them are the same guns.
Quirk: All right, why don't you give us the story then, just tying the whole thing in.
Trudo: Ah, well Mr. Orso has helped me with a statement here. I know I kon't know what to do with it; I'm not a very good speaker, but, ah..
Quirk: Well, does the statement reflect what it is you'd like to tell us?
Trudo: Well, to start with. Yeah, pretty much.
Orso: Yes, it is. Would you want it on the record here?
Quirk: I would rather have it on the record, yes sir:
Orso: All right. Trudo: Do you want me to read it?
Quirk: Yes.

Trudo: It's kind of rough, but...ah, you want to know about the guns.
Quirk: Well...
Orso: Now, just read the statement in the record, I think it would
Quirk: If what you are reading us now, Mr. Trudo, is your explanation.....
Trudo: of the whole thing
Quirk: or your statements concerning one, two, and three
yeah, please read it in the record, then leave us a copy of it if you will
Trudo: All right. Well, first off, I admit to Possession of the guns and I admit that I knew they were stolen.
Ah, wait a minute,
Quirk: Maybe we can help you out on this..
Trudo: I got, oh here we are, maybe we'll start with number five here. There is about the guns. Ah, you want to know the reason I had the guns in my possession.
Quirk: Well, yeah, in other words, you have admitted Possession of Firearms, you admitted pleading guilty to it, you admitted stolen property, you say that three are tied in.

I gather the stolen property is the firearms.

Trudo: Yeah.

Quirk: which you possessed, which you plead guilty. We'll work backwards from here.

Trudo: Well what happened, the crime itself, ah, these guns were stolen by someone else, ah, Paul Picher, everybody knows that, and brought to my - my property to be held until someone picked em up who was buying them. That's the extent of my involvement. These guns were not gonna be used in a robbery or anything else; they were simply stolen property and they were hunting guns. They were not pistols or machine guns or anything like that. And, ah, I got involved in it because I needed money. I was desperately in need of money, and, ah, I've got an explanation in this thing here. I don't know, ah, if it's all...

Quirk: They brought these guns to your property?

Trudo: Yes. I received a phone call from someone who I owed money to and as a result I stored the guns in my garage, from--accepted 'em from certain people stored 'em in my garage until the man could come up and purchase 'em.

Quirk: You agreed to store them?

Trudo: Yes I did. I let them use my garage.

Quirk: Were you gonna be paid for this?

Trudo: Yes I was

Quirk: Would it wipe out the debt of the _____?

Trudo: Wipe out the debt, I know.

Quirk: Any additional money, would you say?

Trudo: No.

Quirk: Somebody else was gonna come up and get those guns?

Trudo: Yeah, someone did come up and get them.

Quirk: I see, okay

Trudo: It turned out that the man was working as some kind of an informer, an agent, for the Treasury Department, and the FBI, and, ah, as near as I can find out, I'm not sure, he was arrested prior to my release from here and went to work for them, and, ah, kind of made a little swap. He came on it was six months, do weekends in jail over his crime, and, ah I wound up with...

Quirk: You were indicted then on the charge of possession?

Trudo: Yes, I was. I was indicated on the charge of possession and the charge of, ah,-----well, whatever they say Unauthorized Possession, Felon in Possession, and Possession in Interstate Commerce. Those three charges. It was a three count indictment, but all the counts stated the same thing.

Quirk: Now, three counts for what, again. What was the first count again, Mr. Trudo?

Trudo: Possession of Firearms stated inter, inter, Transported

in Interstate Commerce.

Quirk: Transported Interstate, yeah.

Trudo: The charge, the other charge was Unauthorized Possession of Firearms. There was another one, Felon in Possession of Firearms.

Quirk: I see.

Trudo: And I pleaded guilty to the Felon in Possession of Firearms. I don't know if they got that mixed up there..

Quirk: Count three, the third count, Felon in Possession?

Trudo: I think it was; I think it's mixed up on this paper here, this warrant application.

Quirk: Is that what you got the eighteen months from?

Trudo: Yes, it is.

Quirk: Possession of Firearms Transported Interstate.

Trudo: Then it was count one then, I got, ah,...

Quirk: Was that Plea Bargain, Mr. Trudo?

Trudo: Well, yes it was, it was, it was in a way because it was to plead to the others would just duplicate everything. I don't the court, they could convict me on any one em, I think, but, all three of them would have been double jeopardy or whatever they call it. Cause they're all, they're all the same charge, just lettered differently.

Quirk: How long did you have the guns?

Trudo: Oh, about a week I guess.

Quirk: Did you know they were stolen?

Trudo: Yes, I did.

Quirk: Mm, hm; there was just, just no question in your mind...

Trudo: There's parole violation, yeah, I'm not ssying that there isn't; I'm not contesting it. I do have...

Quirk: This is the fellow you owed money to, was going to wipe if off if you would store these guns until somebody else came and got them?

Trudo: Yes.

Quirk: Was the one who came and got them the agent?

Trudo: No. He was one that was working with the agents.

Quirk: Oh, I see.

Trudo: He was, ah, this Caputo. He was with the local police up there. They have a little game going or something, I don't know what it is. He gets a license to do about what he pleases, and, puts people in jail for it in return.

Quirk: Were there any state charges involved on the same thing, such as the...

Trudo: That was the, ah, number three on the warrant application, Possession of Stolen Property, that was in Vermont District Court in Chittenden County and it was the same guns, and the...

Quirk: What's the story on that; is that still open or?

Trudo: No, they, they dismissed it... they didn't want to

Quirk: bother with it.
They dismissed the fact that you were convicted on the, ah, plead guilty.

Trudo: Well they brought the charge after I plead guilty. Then dismissed it because of all the parole I had and everything hanging over me.

Quirk: Where were you living at that time?

Trudo: Home. With my wife and children.

Quirk: I mean, where, Burlington?

Trudo: Burlington, Vermont.

Quirk: Is that where Picher is?

Trudo: Yes.

Quirk: So you were reporting directly to him?

Trudo: Yes.

Quirk: Let's see. You were on parole roughly about how long before you got into this?

Trudo: Fifty or sixty days, something like that.

Quirk: Yeah. When you left, or when you went back, that was your plan to go home to the wife, hmm?

Trudo: Yes, it was.

Quirk: And children?

Trudo: Yes.

Quirk: Did you have a job that you were going back to?

Trudo: I had a job but it turned out that I didn't have a job once I got there.

Quirk: Well, what... what were you looking for or what did you think you had found?

Trudo: Ah, men, Mr. Robar, who is an old friend of mine said I could work for him until I, at least until I found something better. And this was in the fall of 74. Now, he's in the construction business, and by the time I got out, with everything falling apart in the economy, he was almost on welfare himself, so... I got a few days work for pocket money and that's about it. And, ah, I went, I canvassed the state but there was just nothing happening.

Quirk: Did you actually work at all, for any length of time while you were on, it was only a short period of time?

Trudo: Well, I worked for Mr. Robar. When he called me up in the morning and said I can give you six hours today and eight hours maybe next week, that's what I was doing. or something like that you know.

Quirk: Now, your plan now would then be go back to the same area; wife and child are still in Burlington?

Trudo: Yeah, but I gotta get them out of there. Ah, my little girl got molested and there's an awful mess up there. That's one of the reasons I typed this up. To try to explain it to you. I don't know how to put it really.

Quirk: Well, where would you go? Do you have some place in

mind?

have to go to Burlington first. Ah, if

Quirk: Would you be relocating in Vermont?

Trudo: Yeah, well just another town would be, you know, thirty miles away would be all right. I could live there.

Quirk: And, ah, do you have a skill? Do you have a trade, or some kind of..

Trudo: Yes, I, ah, well, I went to the dental lab program here. I couldn't find much of anything in Vermont, but, ah, maybe it's changed now, but I had, I'm an equipment operator and a teamster driver.

Quirk: Are you union?

Trudo: I'm a teamster union and I've been in the operating engineers.

Quirk: Are your cards till good?

Trudo: I never made a waiver out, but I can get it fixed.

Quirk: All you have to do is what, pay back dues?

Trudo: No, I think I can get a waiver and they'll waive most of the back dues because I've been in jail.

Quirk: When did you take this dental lab? First time or the second time? Recently, or..?

Trudo: No. The first time I was here.

Quirk: You haven't done too well when you come. What's been happening to you here? Second time back?

Trudo: I don't know. I just can't get it together. I can't accept the fact that I have to do this time and my family is having such a rough time out there.

Quirk: What did you have, one serious charge?

Trudo: Ah, I didn't lose any good time...

Quirk: On the eighteen, on the eighteen month sentence, one serious charge?

Trudo: One serious charge, yeah.

Quirk: About the time they suspended the 60 days?

Trudo: Yeah. For thirty days, ah, this body's laying around throughout this institution and they wanted me to go and live in E-1 and, ah, rather than lose my life, over some foolishness, ah,...

Quirk: What are you doing, now? Program wise, different?

Trudo: Pardon?

Quirk: Program wise, what are you doing now that you do outside?

Trudo: I'm working in the steamfitters department down here; doing a little plumbing, heating, and, ah, getting along all right now.

Quirk: Anything else?

Trudo: There's... no. Just trying to keep, keep it together.

Quirk: Did you ever go into sea?

Trudo: Yes.

Quirk: _____ of sea? You're not in there now?

Trudo: For..no. I went in there for the, ah, when I wouldn't go to E-1.

Quirk: How long were you in this sea?

Trudo: About six days, I guess.

Quirk: to join general population.

Mr. Tenney.

Tenney: Yes, Mr. Trudo, if you wanted to submit that paper, to us, ah, that we keep this for our records...

Trudo: Yes, ah, will this be considered at this time?

Tenney: Yes, yes

Trudo: I hope so.

Quirk: Now, is that your only copy, or do you have...

Trudo: No. We have other copies.

Orso: No, no. Here's one and, ah, I have the original here.

Trudo: Well, why don't you give them the original because that's got some...

Quirk: Well, maybe you better keep the original.

Orso: Yeah. Why don't you sign this form though.

Trudo: Is this corrected? That area where...

Orso: Am, Ah, there's just one part here that we need to correct.

Quirk: Here, I've got a pen.

Trudo: Correct that one sentence.

Quirk: I'd rather you keep the original; you may need copies of it.

Orso: Yeah. I have the original here. There's one other, ah, paper we have I'd like the Board to consider, ah, this is a letter from, ah, this isn't it either... This is a letter from Dr. Donald Rife, ah, who is a fellow in the American Academy of Psychiatry, and he practices at, ah, 149 Cherry Street, Burlington, Vermont.

Quirk: How do you spell his name, Mr.Orso?

Orso: Ah, his last name is R-I-F-E, Rife.

Quirk: R-I-F-E, Rife?

Orso: Mmm-hmm, and his letter is dated March the 18th, 1976. To whom it may concern: I have been treating Alicia Trudo, the six year old daughter of Calvin Trudo, for emotional problems. These emotional problems are related to a very difficult neighborhood situation which seems to be irreparable. I have recommended Mrs. Trudo that her daughter would benefit from moving to another community. However, she has not---she has been unable to do so on her own and feels that she will not be able to do so until such time as her husband is released. In my opinion, a difficult environmental situation in Alicia Trudo's problems would be significantly benefited by the return of her father to the home, assuming that he is in re----that he is a reasonable risk in the community. Respectfully submitted, Donald Rife, M.D. Fellow of the American Academy of Child Psychiatry.

I just-----
The reason I read it for the record, I just have the one copy.

Quirk: We have- we have the substance of it, Mr. Orso.
Quirk: Mr. Trudo, what's your wife doing now support wise, does she work?
Trudo: She's on welfare
Quirk: Public Assistance?
Trudo: Yes
Quirk: Just the one child, you have?
Trudo: Two
Quirk: Two. How old is the other child?
Trudo: Five.
Quirk: Six and five. Is Alicia in school?
Trudo: Yes
Quirk: Is the younger one in school?
Trudo: No. She's in kindergarten.
Quirk: Mr. Tenney?
Tenney: No sir.
Quirk: What else can we, ah, can you tell us, Mr. Trudo? Anything further on these charges, what you told us and what's contained in your letter are pretty much the same, or some...
Trudo: Well, ah...
Quirk: Your idea of, ah, at least getting out of debt to store them for somebody and you found out later that, ah, you were, ah, involved, huh?
Trudo: Yeah, about the only thing I can tell you is at this time in the spring of the year in Vermont, I'd be able that, you know, there's employment available, and, ah, I've got several different places I can go to work. My problem, my parole violation came as a result of just desperation. I had no money and no place of getting any. And I didn't want to go robbing banks or doing any other crazy.....
Quirk: What's your record before the bank robbery? Were you in other trouble before that?
Trudo: I've been in and out of trouble all my life.
Quirk: Any reason to believe you wouldn't be again?
Trudo: I can give you reasons, but, you know, they're just my opinion.
Quirk: You knew of the pressures that come up. You took a chance shortly after you were out there, knowing that, ah, well I suspect that you didn't expect to get caught, but you took a chance out there, knowing you had some fifty-one hundred days that you might have to do back. Are you generally careless, Mr. Trudo, is that why?
Trudo: I am not careless, but I think I am the worlds' worst thief. Ah, I get caught, just, I, just about everything I do. I'm about washed up, ah, I have got some help

this time. The AG's office, state of Vermont, has offered to help me get settled, and, ah, I got some people interested in giving me some assistance.

Quirk: Are you interested in helping yourself now, Mr. Trudo?

Trudo: I'm more interested in my little girl right at the moment. It's pretty much driving me nuts, and, ah, she's got to have me around her. The doctor told my wife that she's just - you know, she's going to be deformed if something isn't done about it.

Trudo: She was molested, and, ah the guy lives two houses up the street, and he's part of the local political scene, so nothing, nothing can be done. She's living in, with this, ah, some kind of public housing assistance or something. She pays \$45.00 a month rent for this place and they make the rest of it up. And she just doesn't have the money to get an apartment or house anywhere else. You know, she can't get out of there. And, ah, she's gone to work and she makes less money working than she does on welfare because they pull the check and she can only make about \$70.00 a week; she can't get along on it. It's pretty rough, and, ah, she's a pretty--she's had her problems and we've had our problems with out marriage, but basically she's a good woman.

Quirk: Has she been able to get down to see you at all?

Trudo: No. She doesn't have any money at all. She--her--the car's parked in the yard with no tires on it.

Quirk: Mr. Orso would you like to make a summary statement of some kind?

Orso: Yes, I think that the family situation here and the economic situation, ah, should be considered, ah, I think part of the problem before when he left here was, ah, the fact that he had a limited amount of money and when he actually, ah, he had \$60.00 when he was released, he went home and had a meal along the way brought some gifts, he had \$40.00. And, of course, Mr. Robar's business fell through, that he was almost the brink of bankruptcy, and, ah, of course, I worked for the welfare department myself for eleven years, and, ah, I know that ah, you know, the grants based on food, clothing and incidentals, and, ah, they do have it a little better with housing projects, but, it's, ah, hard to get by on and once a family does get in a hole there's no way of catching up. I mean, even in the law practice, everyday, I get calls where well they're behind in their rent, well, you know, once they're behind there's no way to get caught up, so, I think that the economic thing here was a factor. Of course, I believe that if Mr. Trudo is released, he would have to have close supervision and, ah,...

Quirk: Needs a lot of help

Orso: he'd have to adjust to this, you know. I mean if his family and children mean that much to him he'd have to face it and say look I'm gonna stay out of trouble, I'm gonna do what I can for my family and put them foremost and try to stay out of trouble if he can.

Trudo: I have the facilities to get a little bit of financial help and help to move and help find a job, you know, a good job. One that I'm going to keep.

Quirk: What, specifically, have you got going for you now, Mr. Trudo? Specific?

Trudo: Specifically, I've got the Attorney General's Office of the State of Vermont.

Quirk: All right, how is he going to help you, now?

Trudo: He, his investigator, Mr. Peter Barton, is down here to see me. And, of course, they want me to go up there and testify and do all kinds of crazy stuff that I can't do while I'm in here. And don't know if I can do on federal parole anyway. Ah, he was going to represent me, he was going to come to the Board with me last time. They sent word to Mr. James that they wanted names and dates and all kinds of things and I can't supply them. I've got a wife and two little girls out there that have got to face whatever I do, you know, but he did say, when he come to see me, that any way he could help me, or if the AG's office could make a small loan, a loan of a truck or some damn thing to move my furniture, they would.

Quirk: Is that conditioned, of course, on..

Trudo: That's not, ah, that's not conditional. They'd help me get settled. They do want me to, they're got a little organized crime problem, the State of Vermont, and they don't know what to do with it, and, they had a chance to get some federal grants to hire some personnel that knew how to deal with it. They have these old, conservative Congressmen and Senators, that they're like ostriches, their heads stuck in the ground. They don't want to hear anything.

Quirk: Well, what will you do?

Trudo: He wants me to go before these people and talk to them but not testify against anybody. Just tell them of my background, what I know about what, ah, you know, there'd be no arrests.....

Quirk: Well, what would that mean to you, I'm thinking in terms of, ah, that won't pay you anything will it, or will it?

Trudo: No. Well, in return for that, they'll help me what they can, understand? Ah, not only that it would be a good thing because after that these people that I seem to keep falling in with, you know I'm not blaming them for my troubles, but I am stating that I don't seem to be able to keep away from them very well. Well, after

that they won't want anything to do with me.

Quirk: Would it be better for you to leave Vermont, permanently, do you have relatives anyplace else, or?

Trudo: Ah, I'm not so sure it would be, because, ah, you know, it'd be better for me to leave Chittenden County. There's no question about that, but, that is my home. I don't have a very good family as far as mother and father and people like that, but I grew up there and I can handle myself there. And, I just, for me living in a city, or someplace, I don't, I don't want my kids to grow up there, you know.

Quirk: Now, you don't want to go back to Burlington; they have a halfway house up there in Burlington?

Trudo: Yeah, they have Community Correctional Centers up there; they accept federal prisoners.

Orso: I think what he meant by his questioning, he may have misunderstood you, the start of your question was, I believe you meant, What does he have to go to job wise now when he goes back? I think that would...

Trudo: Oh, oh, I'm sorry.

Orso: Yeah, that's what he meant. You talked to me about your father-in-law....

Quirk: I know you have a teamsters union and...

Trudo: Yeah, well, my father-in-law has dump trucks and he's back in Vermont now. He's working up there and there's gonna be some work on Route 7 will be starting up, probably within the next three or four weeks. And, anytime I want I can work for him, and I can work for him until the first snowfall. By that time I should be able to get into a dental lab or...

Quirk: Just getting over the last snowfall up there now.

Trudo: Yeah. But, ah, and L.N. Pike and Sons, a paving contractor, they're all over the northeast, I don't know if you've ever heard of them or not, but I can operate a paver for them, a roller, or, you know, the guy wants me, he's called up my father-in-law a couple of times and asked if I was gonna be out for summer work. In 74, maybe in your job you probably didn't realize it, but it was hell. There was nothing going. There was no construction work at all. Everything was just folded up, and it's starting to come back a little now. They've got some government funds to work on Route 7 in Vermont and there's a couple of nursing homes going up, there's lot of work up there right now. And there will be all this summer.

Quirk: You mean you think you can latch on to some of that?

Trudo: There's no question. I've worked for most of these people off and on for ten-twelve years and they'll hire me back and_____.

Quirk: Okay. Anything else?

Trudo: Ah, nothing that isn't in that paper. I don't know if you'll read that before you make your final decision or not, but, ah...

Quirk: We shall. Mr. Orso?

Trudo: It's crude, but it's the truth.

Orso: Well, I, ah, didn't change any. I thought, left him tell it in his own words rather than, you know, ah, I think, if it's possible, the Board should give him a chance, ah, he should realize by now that if he's gonna do wrong he's gonna come back here. He's got quite a long time to face if he is left out, so, with that in mind if he is really interested in his children and his wife shy, he should make, ah, finding a job the first priority and taking care of his family right along with it his first priority.

Trudo: I can have a job, ah, in two weeks just _____ when I can get one back.

Orso: And, ah, if mixing with bad company is his fault, I would say avoid it.

Quirk: Okay, thank you gentlemen. Mr. Trudo, if you'll stand outside for a couple of minutes; you come back, too, will you Mr. Orso?

Trudo: Thank you. All right. Fine. Thank you.

Quirk: Mr. Trudo, Mr. Tenney and I have discussed the situation and we have come to two tentative decisions. First one, is to revoke your parole. The reason for that is, of course, your admissions to the three offenses, ah, violations that are listed on the warrant application. That was not a very hard decision to reach because it was, in the fact, of a conviction. The second one was not as easy to reach and what we had to take into consideration were several things. First of all, we know this position that your family is in. We recognize, ah, we know how much they need you; we know what your plans are. We also know, of course, that we have some responsibility to the Parole Board. We know, particularly, that you were on parole for two months before you got into this situation again. So, that leads us to our second decision, and, we are strictly, really, there's two points, one is accountability and for accountability we figure, ah, a minimum of two years, but, you've already got sixteen of them now. So, we're gonna continue for an Institutional Review Hearing in December. That's eight months to the sixteen months you get now for two years out of 5100 days; we feel it's about the best we can do, on this. Now, recognizing the fact that December isn't a very good month to go home either,

you will probably either be seen on paper or maybe even see the Board at that time. The chances are, if you get a date, it will be somewhere probably in the spring of the following year so it may coincide. But, I will tell you frankly that we've had to consider the situation in it's total, try to take your view and our view in this thus far. We think that this will satisfy accountability. We think it will. Now, whether it will at region or not, I don't know. But the decision we give you now is to set you off for eight months, which, as we say, and I will so put into the summary that, the _____ for accountability as we're seeing it, with sixteen months of it already in. Are there any questions about that, anything you care to bring up now, Mr. Trudo?

Trudo: Nothing that has to do with parole. But what do I do about my family? Is there any federal agency I can get help from or anything?

Quirk: They are now under, what? Local, ah

Trudo: Social Welfare

Quirk: Local welfare assistance? Probably anything doing with federal will probably have to work through the state facilities up there, the federal only contributes certain amounts _____ also the state contributes an amount, I don't know whether Burlington would or not.

Orso: No. Just a federal participation into the state program, we have.

Quirk: Whether or not the fact of what we have decided, what might come back in fifteen days would help you, at least you could say I'm not gonna be around for a while. Whether that works or not, I don't know. Might not be a bad idea, purely gratuitous suggestions, get ahold of the AG up there....

Trudo: Get ahold of who?

Quirk: The Adjutant General, or, the Attorney General since what's happened, maybe now, with this kind of information there's no doubt, particularly after fifteen days, if this comes back the way it is, you know that the, ah; you're not going anywhere.

Trudo: Yeah.

Quirk: Before the end of the year, anyhow.

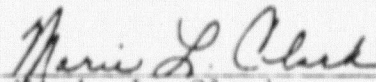
Trudo: Well, ah, to swap him, you know, put somebody else in the penitentiary to get myself out. That's why I'm in here. Someone else did that, you know, but....

Quirk: Mr. Trudo, we don't, ah, not much we can do if somebody's not in here. You're a parole violator and we have to look at your case. We think we gave you the best decision we could come up with, ah, we're not suggesting you think it's the best, but, we think it's about the best we could do under the circumstances.

Trudo: You people are aware of the fact that I tried to go to the police with this long before the guns were even stolen.
Quirk: Yeah. Also aware of the fact that you were convicted. Okay, Mr. Trudo, in any event, good luck to yourself.
Trudo: All right.
Quirk: We'll make this a part of your record.
Trudo: Okay, fine.
Quirk: Thank you.
Orso: Thank you.

CERTIFICATE:

I certify this transcript to be accurate to the best of my knowledge having transcribed it from a recording.



Marie L. Clark 10-7-76

UNITED STATES OF AMERICA,

IN THE MIDDLE DISTRICT OF

vs.

PENNSYLVANIA

CALVIN L. TRUDO,

Defendant.

PETITION IN SUPPORT OF REPAROLE

The Petition of Calvin L. Trudo respectfully represents:

1. The extreme hardship upon my family and myself caused by further jail time should be a factor in consideration for reparole. Both my wife and my oldest daughter are under a Doctor's care for emotional problems that would be relieved were I at home..

2. Shortly after my arrest, my daughter Alicia was molested by a neighbor's son. Alicia was 5 years old and the neighbor was a 17 year old son of a local politician and crime figure. Since that time Alicia has had to have help and my wife has been under medication. Alicia lives in an all female household because I am here. She is afraid of men and hysterical a great deal of the time. Her Doctor has advised that my presence would possibly help her to develop normally and save her from possible commitment in an institution. All this has marked my youngest daughter, Traci, who is a year younger than Alicia, and has caused emotional problems for her.

3. Social welfare is my families only means of support. We have none who will help my wife to raise the money to move from where she lives. The person who attacked my daughter and several others in the neighborhood and others near our house, have my family in constant fear and remind Alicia as to what happened. My wife has been harrassed by the boy's father and the local police, who are friends of the boy's father. I would be able to help Alicia and my wife to overcome their emotional problems and also move away from their house, to another town if my parole was not revoked. It is my belief and Alicia's Doctor's belief that she cannot retain her sanity or have the opportunity to survive outside an institution unless I am home and she is moved to a place without the reminder of what happened.

4. The fact that it is almost impossible for me to show and prove the mitigating circumstances that existed and caused my actions in violation of my parole and the situation at the time

of my release in September of 1974 should be taken into consideration. I was released in September with about \$60.00; on the way home I had a meal and bought some gifts. When I got home I had \$40.00. When I went before the Board in August, 1974 I had a job offer from Clifford Robar. At the time Mr. Robar's business was doing well enough that he felt he could hire me, but by the time I got out, he was near bankruptcy. He was able to give me a few days a week for some pocket money. The Welfare Department told me that my being home would affect my wife's status for receiving some benefits, and that they would have to cut off her support, leaving me, my wife and the children in a desperate situation. I borrowed \$300.00 from Henry Caputo who was the Government Informer in my case. The money was for necessary repairs on my car, as there is not much other way to get around in Vermont. After repairs I had about \$50.00 and used most of this for gasoline while scouring the area for work, this being during the recession in Vermont, there was nothing to be found. Caputo started to pressure me for his money and when he got particularly nasty I contacted the local ~~police and the~~ FBI with the idea of assuring some protection for myself and my family, as there was no way of raising the money. I was told by the local agent that I could not expect any help from them and not to bother calling again. I was then advised by the police that it was also in violation of my parole to call them.

5) Then I got involved in the gun deal - out of desperation, I did not want to commit any kind of crime. I had to raise some money to live and to clear my debt with Caputo. I did not steal the guns or even move them from one place to another. I allowed them to be stored in my garage and assisted in their sale to Caputo, who was caught with them. The two remaining in my garage were not being used for a crime, they were waiting to be picked up by the men that stole them- Williard Rock, the man who heard my conversation with the Police, died in the Spring of 1975 so he can not testify to that fact, or any fact. The fact is, that had I been able to support my family, I would have had nothing to do with the guns. I was sincere in my desire to do well and stay out of trouble when I was released and I still am.

6) Since I have been here the events in my life and in the area I come from have attracted help and interest from some people. The Attorney General of Vermont, Jerome Diamond, has discovered he has an organized crime problem in the state. His chief investigation has been to the prison with me and he has asked for help to convince certain Vermont Congressman that it really does exist. The original proposal was that I go before a panel of these Congressmen and tell them my knowledge of the organized crime. I am willing to do this, but since that time, they have asked that I include names and other information, which if I gave this information out I would only be endangering my family's lives. The investigator who came to talk to me said he would personally help me to get my life started were I to help them with the Congressmen.

7) The economic scene in Vermont has almost returned to normal and I have had several job offers. I should be able to make it without a great deal of help. I could move my family into another area, get them off welfare and make a balanced home for my children. The situation at home has improved enough to make my situation reasonable, though not easy.

I can do what I am suppose to do. I wanted to last time and would have if there was a way. I am cut off from most things that people take for granted, I have no credit, no access to the legal protection that afforded citizens have, because of my background. I must do it alone and it is possible this time. If I can work and make enough to live, I need nothing else.

My explanation is for the purpose of clarifying things for the Board. I am not a good speaker and it is proper that this information be a part of my revocation hearing. The foregoing is the complete truth.

Respectfully submitted,

Calvin Trudo
CALVIN TRUDO

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT

CALVIN L. TRUDO

v.

Civil No. 76-81

UNITED STATES PAROLE BOARD

MEMORANDUM OF LAW

In its interim opinion and order dated May 6, 1976, this Honorable Court accepted jurisdiction of this action under the provisions of 28 U.S.C. § 2241(a). This Court found that it had personal jurisdiction over the United States Parole Board as custodian of the petitioner. However, the Court of Appeals for the Second Circuit has recently considered the same issue presented here in the precise context presented and held that the United States Parole Board is not the custodian of a person in the petitioner's status. Billiteri v. United States Board of Parole, et al, No. 75-6120, decided 8-30-76, a copy of which is attached. In its opinion the Court of Appeals held that the warden at the Federal Penitentiary in Lewisburg, Pennsylvania and not the United States Parole Board was the proper custodian of Billiteri who was seeking a writ of habeas corpus for the failure of the Parole Board to grant him parole.* In addressing this issue the Court said:

* The Court of Appeals relied on the holding in Braden v. 30th Judicial Circuit Court of Kentucky, 410 U.S. 484 (1973), as this Honorable Court did, to find that the United States Parole Board was not the proper custodian of petitioner. Billiteri at 5302-3.

. . . but it would stretch the meaning of the term beyond the limits thusfar established by the Supreme Court to characterize the Parole Board as the "custodian" of a prisoner who is under the control of a warden and confined in a prison, and who is seeking a habeas corpus action, to be released from precisely that form of confinement. At that point the prisoner's relationship with the Parole Board is based solely on the fact that it is the decision-making body which may, in its discretion, authorize a prisoner's release on parole.*

It would have imposed no great hardship on Billiteri to have brought his action against the warden in the Middle District of Pennsylvania, as he should have done. As he did not, the present case must be dismissed for lack of jurisdiction over an application for writ of habeas corpus, which is the only appropriate means for testing out his claims to achieve the special relief requested. At 5303.

Therefore, since it now appears according to the opinion in Billiteri, that this Court does not have jurisdiction over the subject matter of this action, the United States respectfully requests that this action be dismissed.

at Rutland, in the District of Vermont, this
13th day of October, 1976.

United States Parole Board

George W.F. Cook
United States Attorney

By:

JEROME J. NIEDERMEIER
Assistant U.S. Attorney

* Citing Lee v. United States, 501 F.2d 494, (8th Cir. 1974), the Court indicated that the Board of Parole, arguably, would be a custodian if it itself had caused the detention of the parolee for violation of his parole. At 5303. The Government submits that this is not the fact in Mr. Trudo's case, and even if so, Lee would give jurisdiction over the Parole Board only in Washington, D.C. Lee at 501.

COPY

U.S. DISTRICT COURT
DISTRICT OF VERMONT
FILED

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BY *[Signature]*
CLERK

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

Calvin Lawrence Trudo :
 : Civil Action
v. :
 : File No. 76-81
United States Parole Board :

OPINION AND ORDER

This is a pro se action for a writ of habeas corpus pursuant to 28 U.S.C. § 2241. Petitioner alleges that the Parole Board violated his constitutional right to due process by denying him a timely parole revocation hearing. The Court, by orders filed May 6, 1976 and September 14, 1976, required the production of further evidence to supplement the record in this matter. The Court has now reviewed all of the evidence in the record and, for the reasons stated below concludes that the petition must be denied.

The following is a brief summary of the pertinent facts.

Petitioner was originally sentenced on December 11, 1970 for a violation of 18 U.S.C. § 2113(d). He was released on parole on September 27, 1974. On November 26, 1974, while on parole, he was arrested on a firearms violation to which he pleaded guilty in January, 1975. He received an eighteen months sentence which he served at Lewisburg Penitentiary. On February 10, 1975 a parole violator warrant was issued and it was lodged against him at the prison as a detainer in July, 1975. The parole violator

warrant was automatically executed at the expiration of petitioner's sentence on the firearms violation on January 30, 1976, but he did not receive his parole violation hearing until April 5, 1976. The charges against petitioner were apparently explained to him in January and February 1976 at hearings preliminary to the parole revocation hearing level. The actual records of those hearings are not before the Court.

Before considering the merits of this matter, the Court must decide the Parole Board's motion to dismiss for lack of subject matter jurisdiction. By order filed May 6, 1976, we found that the Parole Board was a proper respondent in this action and a "custodian" for the purposes of 28 U.S.C. § 2241. The Parole Board now urges, on the basis of Billiteri v. United States Board of Parole, Docket No. 75-6120, slip op. 5285 (2d Cir., Aug. 30, 1976), that our former decision was incorrect. Billiteri held that "it would stretch the meaning of the term beyond the limits thus far established by the Supreme Court to characterize the Parole Board as the "custodian" of a prisoner who is under the control of a warden and confined in a prison, and who is seeking, in a habeas corpus action, to be released from precisely that form of confinement." slip op. at 5303. While we, of course, acknowledge the authority of Billiteri where a prisoner is merely seeking parole, we think that where a parole violator warrant is lodged as a detainer, as in this case, there is sufficient "custody" by the Parole Board to support habeas corpus jurisdiction. The Second Circuit, in a more recent case much more nearly analogous to the one at hand than Billiteri, apparently

reached the same conclusion. Shepard v. United States Board of Parole, Docket No. 76-2021, slip op. 5413, 5415 (2d Cir., Sept. 7, 1976). Accord Jones v. Johnston, 534 F.2d 353, 357 (D.C. Cir. 1976) and cases cited therein. We, therefore, decline to dismiss this action for lack of subject matter jurisdiction and proceed to the merits.

This action puts in issue the due process procedures to which an alleged parole violator is entitled where he has pled guilty to, or been convicted of a crime while on parole and a parole violator warrant has been lodged as a detainer against him while he is serving the intervening sentence. The circuits are in conflict as to the proper answer to this question. The Supreme Court has granted certiorari in Moody v. Daggett, ____ U.S. ____, 44 U.S.L.W. 3493 (March 1, 1976), and in all probability will decide the issue this term. Until such time as the Supreme Court makes its determination, however, this Court is bound to follow the authority of the holding of the Second Circuit Court of Appeals in Shepard v. United States Board of Parole, Docket No. 76-2021, slip op. 5413 (2d Cir., Sept. 7, 1976).

Shepard does not hold that an alleged parole violator is entitled to a revocation hearing during his intervening prison sentence, but it does hold that he has a due process right to contest in some meaningful manner the parole violation warrant lodged against him as a detainer. It holds that these due process requirements are met if the parolee is afforded

- (1) the safeguards now mandated by 18 U.S.C. § 4214,¹ (2) full and timely disclosure of the

evidence to be considered against him, and
(3) a specific statement of the factual
findings and reasoning underlying the decision
arrived at concerning his detainer.^{2/}

Slip op. at 5425. It is clear that petitioner in this
case did not receive the benefit of these procedures.

Petitioner was afforded preliminary hearings in
January and February of 1976, some six or seven months after
the parole violator warrant was lodged as a detainer against
him. Although the record is not clear as to exactly what
transpired at the preliminary hearings, the transcript of
petitioner's April 5, 1976 parole revocation hearing
indicates that the preliminary hearings presented only an
opportunity for the petitioner to request the appointment of
counsel and to make a statement concerning the alleged
parole violation if he desired to do so.^{3/} In any event, it
is clear that the preliminary hearings did not measure up to
the due process standards outlined in Shepard. Petitioner
was ultimately afforded a parole revocation hearing that
comported with the requirements of due process on April 5,
1976.

Thus, we conclude that by not being afforded
prompt and proper detainer-review procedures, petitioner was
denied due process of law in violation of the fifth amendment.
The Second Circuit's instructions to the lower court in
Shepard, as to the proper remedy for this violation, are
adaptable to the circumstances of the instant case.^{4/}

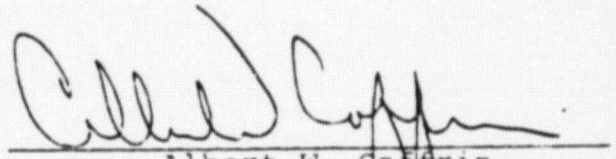
If the court below finds that the consequent delay
in according [petitioner] these rights would so
impair his ability to adduce mitigating evidence
that a constitutionally adequate review would not
now be possible, it may order the warrant quashed.

Otherwise, the [Parole] Commission should be required to review Shepard's detainer in conformance with this opinion within such time as the court may fix.

To justify release on a writ of habeas corpus in the instant case, therefore, petitioner must demonstrate that his ability to adduce mitigating evidence was so prejudiced by the delay preceding his otherwise constitutionally adequate parole revocation hearing that the hearing was inherently inadequate. Petitioner alleges that the intervening death of Willard Rock, a witness who would have testified to mitigating circumstances, presents such prejudice. However, petitioner testified to those mitigating circumstances that he wished the Board to consider, and the Board accepted them at face value. Petitioner was free to submit further evidence in this regard through his own testimony, had he desired to do so. There is nothing to indicate that the Board would have prohibited or disregarded such an offer of evidence. Given these circumstances, the Court concludes, upon its review of the record, that Mr. Rock's testimony would not have added significantly to the evidence before the Board. Thus, no prejudice appears to have resulted to petitioner from Mr. Rock's unavailability. The Board gave due weight to the mitigating circumstances, but, nonetheless, revoked petitioner's parole on the basis of his admitted violation of the law. The Court holds, therefore, that the delay preceding petitioner's otherwise constitutionally adequate parole revocation hearing did not prejudice petitioner's ability to present mitigating evidence to such an extent as to require the release of petitioner on a writ of habeas corpus.

Accordingly, it is ordered that the United States Parole Board's motion to dismiss is denied and that Calvin Lawrence Trudo's petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241 is also denied.

Dated at Burlington in the District of Vermont,
this 8th day of November, 1976.


Albert W. Coffrin
District Judge

FOOTNOTES

1/ 18 U.S.C. § 4214 is part of the Parole Commission and Reorganization Act, Pub. L. 94-233, which became effective May 14, 1976. 18 U.S.C. § 4214(b), establishing a detainer-review procedure, reads:

(b)(1) Conviction for a Federal, State, or local crime committed subsequent to release on parole shall constitute probable cause for purposes of subsection (a) of this section. In cases in which a parolee has been convicted of such a crime and is serving a new sentence in an institution, a parole revocation warrant or summons issued pursuant to section 4213 may be placed against him as a detainer. Such detainer shall be reviewed by the Commission within one hundred and eighty days of notification to the Commission of placement. The parolee shall receive notice of the pending review, have an opportunity to submit a written application containing information relative to the disposition of the detainer, and, unless waived, shall have counsel as provided in subsection (a)(2)(B) of this section to assist him in the preparation of such application.

(2) If the Commission determines that additional information is needed to review a detainer, a dispositional hearing may be held at the institution where the parolee is confined. The parolee shall have notice of such hearing, be allowed to appear and testify on his own behalf, and, unless waived, shall have counsel as provided in subsection (a)(2)(B) of this section.

(3) Following the disposition review, the Commission may:

- (A) let the detainer stand; or
- (B) withdraw the detainer.

28 C.F.R. § 2.47 is the proposed implementing regulation for this procedure.

2/ Requirements two and three were added to cure the constitutional infirmities that the Second Circuit found to exist in the detainer-review procedure of 18 U.S.C. § 4214. See Shepard, supra, slip op. at 5424-25.

3/ The preliminary hearing quite probably was held for the purpose of complying with 28 C.F.R. § 2.53, the predecessor to the current detainer-review provisions, which was held in Shepard to provide constitutionally inadequate protection to one in petitioner's position.

4/ In Shepard the alleged parole violator apparently was still serving the intervening sentence at the time of the Court's remand. In the instant case the intervening sentence has expired and the parole revocation hearing has been held. In either case, a review of the possible prejudice to the petitioner because of the failure of the Board to accord him his due process rights, with the granting of such appropriate relief as indicated by the circumstances, appears to be the proper remedy.